

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1205

AN ACT to amend the Indiana Code concerning public safety.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-15-10-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. **(a)** An employee may not be disciplined for absence from work if:

- (1) the employee is a member of a volunteer fire department under IC 36-8-12;
- (2) the employee has notified ~~his~~ **the employee's** immediate supervisor in writing that ~~he~~ **the employee** is a member of a volunteer fire department;
- (3) the employee presents a written statement to ~~his~~ **the employee's** immediate supervisor from the chief or other officer in charge of the volunteer fire department that the employee was engaged in emergency firefighting activity at the time of ~~his~~ **the employee's** absence from work; and
- (4) the employee secures authorization from ~~his~~ **the employee's** supervisor to leave ~~his~~ **the employee's** duty station if the employee has already reported for work.

(b) An employee who:

- (1) **is a member of a volunteer fire department under IC 36-8-12; and**
- (2) **is injured while the employee is engaged in emergency firefighting or other emergency response;**

may not be disciplined as a result of the injury or an absence from

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work because of the injury if the employee complies with subsections (a) and (c). However, for each instance of emergency firefighting activity or other emergency response that results in an injury to an employee, this subsection applies only to the period of the employee's absence from work that does not exceed six (6) months from the date of the injury.

(c) The immediate supervisor of an employee described in subsection (b) may require the employee to provide evidence from a physician or other medical authority showing:

- (1) treatment for the injury at the time of the absence; and
- (2) a connection between the injury and the employee's emergency firefighting or other emergency response activities.

(d) To the extent required by federal or state law, information obtained under subsection (c) by an immediate supervisor must be:

- (1) retained in a separate medical file created for the employee; and
- (2) treated as a confidential medical record.

(e) The state personnel department shall administer an absence from employment under subsection (b) in a manner consistent with the federal Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.), as amended and in effect on January 1, 2009.

SECTION 2. IC 36-8-12-10.5, AS AMENDED BY P.L.43-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10.5. (a) This section does not apply to an employee of the state subject to IC 4-15-10-7.

(b) This section applies to an employee of a political subdivision who:

- (1) is a volunteer firefighter or volunteer member; and
- (2) has notified the employee's employer in writing that the employee is a volunteer firefighter or volunteer member.

(c) The political subdivision employer may not discipline an employee:

- (1) for being absent from employment by reason of responding to a fire or emergency call that was received before the time that the employee was to report to employment; ~~or~~
- (2) for leaving the employee's duty station to respond to a fire or an emergency call if the employee has secured authorization from the employee's supervisor to leave the duty station in response to a fire or an emergency call received after the employee has reported to work; ~~or~~

(3) for:

- (A) an injury; or**



(B) an absence from work because of an injury; that occurs while the employee is engaged in emergency firefighting or other emergency response.

However, for each instance of emergency firefighting activity or other emergency response that results in an injury to an employee, subdivision (3) applies only to the period of the employee's absence from work that does not exceed six (6) months from the date of the injury.

(d) The political subdivision employer may require an employee who has been absent from employment as set forth in subsection ~~(c)(1)~~ or ~~(c)(2)~~ (c) to present a written statement from the fire chief or other officer in charge of the volunteer fire department, or officer in charge of the volunteer emergency medical services association, at the time of the absence **or injury** indicating that the employee was engaged in emergency firefighting or emergency activity at the time of the absence **or injury**.

(e) The political subdivision employer may require an employee who is injured or absent from work as described in subsection (c)(3) to provide evidence from a physician or other medical authority showing:

- (1) treatment for the injury at the time of the absence; and**
- (2) a connection between the injury and the employee's emergency firefighting or other emergency response activities.**

(f) To the extent required by federal or state law, information obtained under subsection (e) by a political subdivision employer must be:

- (1) retained in a separate medical file created for the employee; and**
- (2) treated as a confidential medical record.**

~~(c)~~ (g) An employee who is disciplined by the employer in violation of subsection (c) may bring a civil action against the employer in the county of employment. In the action, the employee may seek the following:

- (1) Payment of back wages.
- (2) Reinstatement to the employee's former position.
- (3) Fringe benefits wrongly denied or withdrawn.
- (4) Seniority rights wrongly denied or withdrawn.

An action brought under this subsection must be filed within one (1) year after the date of the disciplinary action.

~~(f)~~ (h) A public servant who permits or authorizes an employee of a political subdivision under the supervision of the public servant to be absent from employment as set forth in subsection (c) is not considered



to have committed a violation of IC 35-44-2-4(b).

SECTION 3. IC 36-8-12-10.7, AS ADDED BY P.L.43-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10.7. (a) This section applies to an employee of a private employer who:

- (1) is a volunteer firefighter or volunteer member; and
- (2) has notified the employee's employer in writing that the employee is a volunteer firefighter or volunteer member.

(b) Except as provided in subsection (c), the employer may not discipline an employee:

- (1) for being absent from employment by reason of responding to a fire or emergency call that was received before the time that the employee was to report to employment; ~~or~~
- (2) for leaving the employee's duty station to respond to a fire or emergency call if the employee has secured authorization from the employee's supervisor to leave the duty station in response to a fire or an emergency call received after the employee has reported to work; ~~or~~

(3) for:

(A) an injury; or

(B) an absence from work because of an injury;

that occurs while the employee is engaged in emergency firefighting or other emergency response.

However, for each instance of emergency firefighting activity or other emergency response that results in an injury to an employee, subdivision (3) applies only to the period of the employee's absence from work that does not exceed six (6) months from the date of the injury.

(c) After the employer has received the notice required under subsection (a)(2), the employer may reject the notification from the employee on the grounds that the employee is an essential employee to the employer. If the employer has rejected the notification of the employee:

- (1) subsection (b) does not apply to the employee; and
- (2) the employee must promptly notify the:
 - (A) fire chief or other officer in charge of the volunteer fire department; or
 - (B) the officer in charge of the volunteer emergency medical services association;

of the rejection of the notice of the employee who is a volunteer firefighter or a volunteer member.

(d) The employer may require an employee who has been absent



from employment as set forth in subsection (b) to present a written statement from the fire chief or other officer in charge of the volunteer fire department, or officer in charge of the emergency medical services association, at the time of the absence **or injury** indicating that the employee was engaged in emergency firefighting or emergency activity at the time of the absence **or injury**.

(e) The employer may require an employee who is injured or absent from work as described in subsection (b)(3) to provide evidence from a physician or other medical authority showing:

- (1) treatment for the injury at the time of the absence; and**
- (2) a connection between the injury and the employee's emergency firefighting or other emergency response activities.**

(f) To the extent required by federal or state law, information obtained under subsection (e) by an employer must be:

- (1) retained in a separate medical file created for the employee; and**
- (2) treated as a confidential medical record.**

SECTION 4. IC 36-8-12-10.9, AS ADDED BY P.L.43-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10.9. (a) The employer may require an employee who will be absent from employment as set forth in:

- (1) section 10.5(c)(1); or
- (2) section 10.7(b)(1);

of this chapter to notify the employer before the scheduled start time for the absence from employment to be excused by the employer.

(b) The employer is not required to pay salary or wages to an employee who has been absent from employment as set forth in section 10.5(c) or 10.7(b) of this chapter for the time away from the employee's duty station. The employee may seek remuneration for the absence from employment by the use of:

- (1) vacation leave;
- (2) personal time; or
- (3) compensatory time off; or
- (4) in the case of an absence from employment as set forth in section 10.5(c)(3) or 10.7(b)(3) of this chapter, sick leave.**

(c) An employer shall administer an absence from employment as set forth in section 10.5(c)(3) or 10.7(b)(3) in a manner consistent with the federal Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.), as amended and in effect on January 1, 2009.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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